

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID RIBEIRO

Plaintiff,

v.

DAVID S. USHER, MARTIN W. NAREY,
PAUL M. KELLY, JAMES D. BRIANT,
LT. HIGGINS, WILLIAM BENNETT AS
DISTRICT ATTORNEY, HOLYOKE POLICE
DEPARTMENT, COMMONWEALTH OF
MASSACHUSETTS, CITY OF HOLYOKE
Defendants.

CIVIL ACTION
NO. 04-30201-KPN

U.S.
DIS.

DEC 28

MASS.

**DEFENDANTS' WILLIAM BENNETT AS DISTRICT ATTORNEY AND THE
COMMONWEALTH OF MASSACHUSETTS MOTION TO DISMISS**

Pursuant to the provisions of Rule 12 (b)(6) of the Federal Rules of Civil Procedure, the Defendants William Bennett as District Attorney and the Commonwealth of Massachusetts move this Court to dismiss the above-entitled case for failure to state a claim upon which relief can be granted.

In support of such motion, the Defendant William Bennett states that he is sued as the District Attorney for negligence and the alleged violations of the Plaintiff's civil rights. As the chief criminal prosecutor of Hampden County, Mr. Bennett is immune from liability for his actions as a prosecutor.

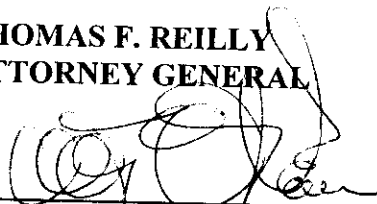
The Commonwealth of Massachusetts is immune from liability under the 11th Amendment to the Constitution of the United States.

The Defendants incorporate their Memorandum of Law in Support of their Motion to Dismiss for further elaboration of these issues.

WHEREFORE, the Defendants William Bennett as District Attorney and the Commonwealth of Massachusetts respectfully request that the above-entitled action be dismissed.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

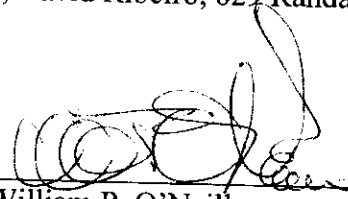


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DATED: December 14, 2004

CERTIFICATE OF SERVICE

I, William P. O'Neill, Assistant Attorney General, Western Massachusetts Division, 1350 Main Street, Springfield, MA 01103-1629 do hereby certify that on December 14, 2004, I caused the foregoing DEFENDANTS' WILLIAM BENNETT AS DISTRICT ATTORNEY AND THE COMMONWEALTH OF MASSACHUSETTS MOTION TO DISMISS and MEMORANDUM OF LAW IN SUPPORT to be served upon the parties in this action by mailing a copy of the same, postage prepaid, first class mail to the Plaintiff pro se, David Ribeiro, 629 Randall Road, Ludlow, Massachusetts 01056



William P. O'Neill
Assistant Attorney General